

TITLE 22, California Code of Regulations

ARTICLE 1. Preamble and Definitions

Preamble

(a) It is the practice of the Office of Environmental Health Hazard Assessment, as lead agency for implementing the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5 et seq., “the Act”) to answer inquiries of individuals and organizations, whenever appropriate, as to the application of the Act to their activities. One of the lead agency’s functions is to issue public rulings on the requirements of the Act.

(b) It is the practice of the lead agency to respond to inquiries concerning the Act as expeditiously as possible. Requests for consideration of an interpretive guideline, safe use determination or information letter ahead of its regular order or by a specified date will be considered as circumstances warrant. However, persons or organizations making such requests should consider the time necessary to comply with public notice and hearing requirements specified in these procedures and any additional delay that may result from compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), if necessary prior to issuing a guideline or determination. Therefore, no assurance can be given that any request will be processed by the time requested.

§ 12102. Definitions.

The following definitions shall apply to the regulations contained in this chapter:

(a) The “Act” means the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Sections 25249.5 et seq.) which was originally adopted by California voters as Proposition 65 on November 4, 1986.

(b) “Certified emergency medical personnel” includes emergency medical technicians I and II and emergency medical technician-paramedics as those terms are defined in Health and Safety Code Sections 1797.80, 1797.82, and 1797.84 (1980).

(c) “Committees” means the Carcinogen Identification Committee and the Developmental and Reproductive Toxicant (DART) Identification Committee of the Office of Environmental Health Hazard Assessment’s Science Advisory Board.

(1) The members of the “Carcinogen Identification Committee” shall be the “state’s qualified experts” as the term is used in Section 25249.8 of the Act with respect to those functions identified in subsection (a) of Section 12305.

(2) The members of the “Developmental and Reproductive Toxicant (DART) Identification Committee,” hereafter referred to as the “DART Identification Committee”

shall be the “state’s qualified experts” as the term is used in Section 25249.8 of the Act with respect to those functions identified in subsection (b) of Section 12305.

(d) “Dental personnel” includes, dentists and dental auxiliary staff as that term is defined in Business and Professions Code Section 1741(e) (1974).

(e) “Director” means the Director of the Office of Environmental Health Hazard Assessment.

(f) “Discharge or release into water or onto or into land” includes a discharge or release to air that is directly and immediately deposited into water or onto land. Except as provided in paragraphs (1) and (2) this subsection, “discharge or release into water or onto or into land” includes the direct or indirect transfer by any person in the course of doing business of any listed chemical to any person within the meaning of Section 25249.11(a) of the Act for the purpose of discharging or releasing the chemical to land or water in a manner which, if committed by the transferor, would violate Section 25249.5 of the Act.

(1) “Discharge or release into water or onto or into land” does not include the sale, exchange or other transfer of a listed chemical to a solid waste disposal facility as defined in Public Resources Code Sections 40121 and 40191, or a hazardous waste facility as defined in Health and Safety Code Section 25117.1 provided that the disposal to such facility complies with all applicable state and federal statutes, rules, regulations, permits, requirements and orders. “Sale, exchange or other transfer,” as used in this paragraph, does not include disposal to a facility owned or operated by the transferor.

(2) “Discharge or release into water or onto or into land” does not include the sale, exchange or other transfer of a listed chemical to any treatment works as defined in 33 United States Code Section 1292 provided that the discharge or release to such treatment works complies with all applicable standards and limitations imposed, and permits required, under federal law or an approved state program. “Sale, exchange or other transfer,” as used in this paragraph, does not include disposal to a facility owned or operated by the transferor.

(g) “Emergency or urgent medical or dental care” means immediate care administered for the alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical or dental conditions, which, if not immediately diagnosed or treated, would lead to serious disability or death.

(h) “Employee” shall have the same meaning as it does in Unemployment Insurance Code Section 621 and in Labor Code Section 3351. Generally, and without limiting the applicability of the definitions in these two statutes, this means that an employee is a person who performs services for remuneration under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.

In computing whether a person employs ten or fewer employees in his business, all full-time and part-time employees on the date on which the discharge, release or exposure occurs must be counted. Thus, the prohibitions on discharge or release and exposures to certain chemicals will apply to any person who has ten or more full-time or part-time employees on the date in question.

(i) “Expose” means to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. An individual may come into contact with a listed chemical through water, air, food, consumer products and any other environmental exposure as well as occupational exposures.

(j) “General public knowledge” means knowledge which has been disseminated to the general public, including information in newspapers of general circulation or radio or television reports in the geographic area affected by the discharge. In order to demonstrate general public knowledge, it shall not be necessary to prove that any members of the public have actually acquired such knowledge but only that the information has been disseminated.

(k) “In the course of doing business” means any act or omission, whether or not for profit, or any act or omission of any employee which furthers the purpose or operation of the business, or which is expressly or implicitly authorized within the meaning of Section 25249.6 of the Act to a listed chemical, except:

(1) as excluded by subdivision (b) of Section 25249.11 of the Act; or

(2) when caused by acts of war or grave and irresistible natural disasters such that no reasonable amount of resistance or advance preparation would be sufficient to avoid the discharge, release or exposure.

(3) for the personal use, consumption or production of listed chemicals by an employee on the business premises or while performing activities for the business, unless the employer knows or should know of such use, consumption or production and knows or should know that such use, consumption or production will expose other individuals.

(l) “Information letter” means a statement issued by the lead agency which does no more than call attention to an established interpretation of the Act or a related principle, without applying it to a specific set of facts.

(m) “Interpretive guideline” means a draft regulatory proposal which has been published for the information, comment, and guidance of California businesses, law enforcement agencies and others concerned.

(n) “Knowingly” refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required. However, a person in the course of doing business who, through misfortune or accident and without

evil design, intention or negligence, commits an act or omits to do something which results in a discharge, release or exposure has not violated Sections 25249.5 or 25249.6 of the Act.

(o) “Lead agency” means the Office of Environmental Health Hazard Assessment as designated by the Governor in Executive Order W-15-91, dated July 17, 1991.

(p) “Listed chemical” means a chemical listed pursuant to Section 25249.8(a) of the Act.

(q) “Medical personnel” includes, physicians, nurse practitioners, physician assistants, and nurses.

(r) “Probably will pass into any source of drinking water” means a discharge or release which more likely than not will pass into any source of drinking water.

(s) “Safe use determination” means a written statement issued by the lead agency to a person affected by the Act or an authorized representative which interprets and applies the Act to a specific set of facts.

(t) “State’s qualified experts” as the term is used in Section 25249.8 of the Act includes the Carcinogen Identification Committee and the DART Identification Committee.

(u) “Substantial injury” means a real and immediate physical injury or a resulting adverse physical condition of a substantial nature to one or more persons.

(v) “Threatened illegal discharge” means the creation of a condition or the taking of an action which is intended to or will foreseeably create a substantial probability that an illegal discharge will occur.

(w) “Water” includes both surface and ground water.

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Sections 25180.7, 25249.5, 25249.6, 25249.8, 25249.9, 25249.10, 25249.11 and 25249.12, Health and Safety Code.

§ 12103. Interpretive Guideline Request. Section Repealed.

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Section 25249.12, Health and Safety Code.

§ 12104. Safe Use Determination. Section Repealed.

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Sections 25249.10 and 25249.12, Health and Safety Code.